

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Johnston Commons, LC,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-77-1420
Parcel No. 241/00747-100-284

On October 5, 2010, the above-captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Johnston Commons, LC, requested its appeal be considered without hearing. It was represented by R. Michael Hayes, General Counsel for Hubbell Realty Company, West Des Moines, Iowa, but Hayes withdrew as counsel subsequent to the sale of the property in December 2009 to purchasers, Eric and Michelle Witt, who are substituted as petitioners. They were self-represented. The Board of Review designated Assistant County Attorneys Ralph E. Marasco, Jr. and David Hibbard as its legal representatives. The Witts and the Board of Review submitted documentary evidence in support of their positions. The Appeal Board now having examined the entire record, and being fully advised, finds:

Findings of Fact

Eric and Michelle Witt, owners of property located at 6913 Jane Austen Court, Johnston, Iowa, continue the Johnston Commons, L.C. appeal from the Polk County Board of Review decision reassessing their property. According to the property record card at the time of the protest, the subject property was a vacant 0.668 acre site, Lot 15 in Plat 6, in the subdivision of Johnson Commons.

The real estate was classified as residential on the initial assessment of January 1, 2009, and valued at \$54,400.

Johnston Commons, L.C. protested to the Board of Review on the ground the property is assessed for more than authorized by law under Iowa Code section 441.37(1)(b). It requested a reduction in the total assessment to \$42,550. According to the analysis by Board of Review Appraiser Stevens, the market data did not support the initial assessment and the property was reduced by the Board of Review to his recommendation of \$46,200. The Board of Review granted the protest, in part, stating, "The assessed value of this property was changed because the market data did not support the assessment."

Johnston Commons, L.C. then filed its appeal with this Board and urged the same ground. In its petition, it contends the lot was available for sale to any builder at a price of \$42,550 if sold through a realtor, or \$40,000 if sold without a commission. It reports the lot has significant shale, backs up to NW 70th Avenue, a major thoroughfare, and has a significant uphill grade in the rear yard. The lot had been for sale since 2004 and remained unsold at the time of the protest.

The Witts report that early in 2008 several local developers closed their doors and defaulted on loans to lenders. According to them, this created an abundance of vacant sites and foreclosed lots in the market at "fire sale rates." They provided information on three lot sales from Plat 6 of Johnston Commons to Hubbell in 2008 and 2009 (Lots 8, 16 and 17). All of the lots were sold by Johnston Commons, L.C. to Hubbell Homes, L.C. for \$40,000. Based on these sales, Witts claim the assessment of their land should also be \$40,000.

The Board of Review contends these sales are not arms-length transactions because they are between related corporate entities. To the contrary, Witts believes Johnston Commons and Hubbell Homes are separate and distinct entities with only a few common investors, which would not distort sales prices. We agree transactions between related entities are generally not considered normal sales

reflecting actual market value unless they are adjusted for any abnormality. *See* Iowa Code § 441.21(1)(b). Although the parties take opposing positions on the issue of whether Johnston Commons and Hubbell homes are related corporate entities, we find documentary evidence to resolve this issue was lacking.

The Board of Review offered sales data on fifteen Johnston Commons Plat 5 and Plat 6 sales which occurred between 2007 and 2008. The building lots ranged from 9048 square feet to 22,725 square feet. Sales prices of all properties ranged from \$42,500 to \$48,500 per lot, with a median of \$44,000 per lot. The median of only 2008 sale prices was \$42,500, a decline of approximately \$6000 from the prior year. The assessed value of the subject lot is well within the range of sale price. Although it is assessed somewhat above the median sale price, it also has greater square footage than any of the comparable sale lots. The Board of Review also submitted an additional list of eight 2008 sales in Johnston Commons Plats 1, 4, 5 and 6. They included sales between Johnston Commons and Hubbell Homes. The sales prices ranged from \$1.10 per square foot to \$4.84 per square foot with a median of approximately \$3.29. The subject property is assessed at \$1.59 which is well-within and at the low end of the range.

After reviewing all of the evidence, we find the Witts did not prove by a preponderance of the evidence their claim that the property is over-assessed as of January 1, 2009. The weight of the evidence, particularly the sales submitted by the Board of Review, show the property is not over-assessed.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal

Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). While the evidence suggested the initial property assessment was for more than authorized by law, it does not support this claim after the reduction made by the Board of Review based on the sales data provided by the Board of Review.

Viewing the evidence as a whole, we determine the Witts have failed to prove by a preponderance of the evidence that their property is over-assessed as of January 1, 2009. Therefore, we affirm the property assessment as determined by the Board of Review. The Appeal Board determines the property assessment value as of January 1, 2009, is \$46,200 in land value.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the Polk County Board of Review, is affirmed.

Dated this 19 day of October 2010.

Jacqueline Rypma
Jacqueline Rypma, Presiding Officer

Richard Stradley
Richard Stradley, Board Member

Karen Oberman
Karen Oberman, Board Chair

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>10-19</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>[Signature]</u>